

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

EAGLE VIEW TECHNOLOGIES, INC.
and PICTOMETRY INTERNATIONAL
CORP.,

Plaintiffs,

v.

XACTWARE SOLUTIONS, INC. and
VERISK ANALYTICS, INC.,

Defendants.

Civil Action
No. 15-cv-07025-RMB-MJS

FILED UNDER SEAL

**DECLARATION OF PHILIP GREEN IN SUPPORT OF DEFENDANTS'
OPPOSITION TO PLAINTIFF'S MOTION AND DOCUMENTATION
SUPPORTING ATTORNEYS' FEES, COSTS, AND INTEREST**

I, Philip Green, declare and state as follows:

1. I am a principal in the accounting and consulting firm of Hoffman Alvary & Company LLC. I have been retained by McCarter & English, LLP, counsel for Xactware Solutions, Inc. (“Xactware”) and Verisk Analytics, Inc. (“Verisk”) (together, “Defendants”) to provide expert testimony in this matter relating to the computation of damages. With respect to this matter, I provided testimony via a pre-trial deposition and at trial on September 23, 2019 and September 24, 2019, during which I stated my qualifications as an expert in financial and accounting matters. I have also provided declarations in support of Defendants’ rebuttal and opposition to requests for injunctive relief and pre- and post-judgment interest that were made by Plaintiff Eagle View Technologies, Inc. (“Plaintiff”) in this matter.

2. A copy of my resume, which sets forth my qualifications and includes a list of my publications in the last ten years and cases in which I have given testimony as an expert by deposition or at trial – in addition to this matter – during the previous four years, is attached as **Exhibit A**.

3. My firm, Hoffman Alvary & Company LLC, is being compensated at the rate of \$575 per hour for my work on this engagement, and my firm’s compensation is not affected by the outcome of this matter.

4. In connection with the analysis and calculations I describe in this declaration, I have reviewed and considered the Court's February 16, 2021 Opinion, as well as the Court's order issued on that same day, concerning Plaintiff's request for attorneys' fees, costs, and interest related to this case. I also have reviewed Plaintiff's Motion and Documentation Supporting Attorneys' Fees, Costs, and Interest, filed April 5, 2021 ("Plaintiff's Interest Motion"). In addition, I have reviewed all the materials filed in support of Plaintiff's Interest Motion on April 5, 2021, including the Declaration of Dr. Jonathan Arnold ("Arnold Declaration"), and the Declaration of Patricia A. Carson, ("Carson Declaration").

5. The Arnold Declaration summarizes Plaintiff's claims for Attorneys' Fees, Non-taxable expenses, and pre- and post-judgment interest on these amounts. The following table summarizes these claims:¹

Summary of the Arnold Declaration's Calculations <i>Interest on Attorneys' Fee and Non-Taxable Expenses</i>				
Claim	Claimed Amount	Pre-Judg. Int.	Post-Judg. Int.	Ongoing Daily Int.
Attorneys' Fees	\$8,762,650.99	\$421,666.28	\$505.60	\$16.65
Non-Taxable Expenses	\$3,186,614.09	\$132,776.90	\$183.87	\$6.05
Total	\$11,949,265.08	\$554,443.18	\$689.47	\$22.70

6. I understand that Defendants are challenging the propriety of certain fees and costs that Plaintiff claims are justified as a result of the Court's decision to

¹ See Exhibits 5, 6 and 10 to the Arnold Declaration.

grant Plaintiff's requests for attorneys' fees, costs, and interest in part. As discussed below, I have performed alternative calculations assuming that certain attorneys' fees and costs claimed by Plaintiff will not be awarded should the Court agree with Defendants that Plaintiff's request for those fees and costs is improper.

7. Specifically, I have been asked to prepare alternative computations of the potential pre-judgment and post-judgment interest on an award of attorneys' fees and costs should the Court agree that an award corresponding to one or more of the categories of attorneys' fees and costs identified by Defendants should not be granted to Plaintiff.

8. I understand that Defendants have identified three categories of costs and fees that they deem to be improper and that Defendants have characterized those categories as follows: **Category 1**- Improper expert fees and costs, which amount to \$682,939.03; **Category 2** - Attorneys' fees amounting to \$1,778,276.75, and non-taxable expenses amounting to \$423,289.26, that were not approved by the Court, and; and **Category 3** – Unjustified and poorly documented attorneys' fees, which correspond to \$590,167.87.²

9. I also have been provided with a modified copies of exhibits B.1 and B.2 to the Carson Declaration, in which the entries corresponding to costs and fees that Defendants deem to be objectionable have been highlighted. I have attached

² See Exhibit H.

those highlighted materials at **Exhibit B** (which has been divided into two parts) to this declaration. I understand that with respect to those materials, the colors of the highlighted entries correspond to the objectionable categories referenced above: green highlighted entries correspond to **Category 1**, yellow highlighted entries correspond to **Category 2**, and blue highlighted entries correspond to **Category 3**.

10. The Arnold Declaration presents amounts of pre-judgment and post-judgement interest that should be awarded to Plaintiff on an award of attorneys' fees and costs consistent with those claimed in Plaintiff's Interest Motion. However, Dr. Arnold's calculations assume that Plaintiff will be awarded all of the attorneys' fees and costs it seeks by way of Plaintiff's Interest Motion. As further described below, and as reflected in the schedules attached to this declaration, the amounts of pre-judgment and post-judgment interest, if any, that may be awarded to Plaintiff will differ from the amounts proposed in the Arnold Declaration if the Court refrains from awarding one or more of the categories of fees and costs that I understand Defendants believe are inappropriate.

11. **Exhibit C** to this declaration presents a summary of the various adjustments I understand have been proposed by the Defendants, and the resultant modifications to Plaintiff's calculations of pre- and post-judgment interest on an

award of attorneys' fees and expenses as calculated by the Arnold Declaration.³

Exhibits D through H provide support for these calculations.

12. Specifically, **Exhibits H-1 through H-3** delineate the specific fees, by the date they were incurred, that I understand Defendants propose are inappropriately claimed by Plaintiff. **Exhibit H** summarizes these potentially excludable fees by category and grouped by invoice bill period, consistent with the Arnold Declaration's methodology for calculating interest on attorneys' fees and non-taxable expenses.⁴ To clarify, I am not offering an opinion regarding the appropriateness or applicability of particular fees or types of expenses.

13. Potential deductions, by category and invoice period, are summarized in the following table:⁵

³ Discrepancies amounting to less than \$0.10 in total interest in certain periods are related to rounding.

⁴ See Exhibit 5 to the Arnold Declaration for invoice date groupings.

⁵ See Exhibit H.

Excludable Attorneys' Fees and Non-Taxable Expenses				
<i>Summary of Excludable Fees by Bill Period</i>				
Invoice Date	Category 1 Expenses	Category 2 Attys' Fees	Category 2 Expenses	Category 3 Attys' Fees
6/28/2019				
7/31/2019				
8/15/2019				
8/29/2019				
10/11/2019				
1/28/2020				
3/9/2020				
3/18/2020				
4/17/2020				
5/12/2020				
6/17/2020				
7/15/2020				
8/12/2020				
9/18/2020				
10/14/2020				
12/9/2020				
Total	\$682,939.03	\$1,778,276.75	\$423,289.26	\$590,167.87

14. The Arnold Declaration's computations define certain claimed amounts as "Attorneys' Fees," and others as "Non-taxable Expenses."⁶ Category 1 includes fees deductible from the Arnold Declaration's "Non-Taxable Expense" amounts. Category 2 includes fees and expenses deductible from both categories of the Arnold Declaration's claimed amounts, and Category 3 fees are deductible from the Arnold Declaration's calculations related to Attorneys' Fees.

⁶ See, e.g., Exhibit 5 to the Arnold Declaration.

Potential Adjustments	
<i>Attorneys' Fees</i>	<i>Non-Taxable Expenses</i>
Category 2	Category 1
Category 3	Category 2

15. The following summarizes the resultant impact on the calculation of pre- and post-judgment interest associated with the exclusion of one or more of these categories of fees and expenses from Plaintiff's claimed calculation.

a) *Category 1 Adjustments*

16. As discussed, I understand that "Category 1" fees include expenses that Defendants argue are improper expert fees and costs. These amount to \$682,939.03 in deductions during the relevant period. Should the Court concur with the Defendants' position that these fees are improperly claimed by the Plaintiff, the Arnold Declaration's calculations of pre- and post-judgment interest will necessarily be affected. The following table summarizes the impact on Plaintiff's claimed interest after deduction of "Category 1" Fees.

Adjustments to Arnold Declaration's Calculations				
<i>Applying "Category 1" Adjustments</i>				
Claim	Claimed Amount	Pre-Judg. Int.	Post-Judg. Int.	Ongoing Daily Int.
Attorneys' Fees	\$8,762,650.99	\$421,666.28	\$505.60	\$16.65
Adj. Non-Taxable Expenses	\$2,503,675.06	\$99,922.61	\$144.46	\$4.76
Total	\$11,266,326.05	\$521,588.89	\$650.07	\$21.41
Deductions from Claim	(\$682,939.03)	(\$32,854.29)	(\$39.41)	(\$1.30)

b) *Category 2 Adjustments*

17. As discussed, I understand that “Category 2” includes fees and expenses that Defendants argue were not approved by the Court. These amount to \$1,778,276.75 in attorneys’ fees, and \$423,289.26 in expenses during the relevant period.⁷ Should the Court concur with the Defendants’ position that these fees are improperly claimed by the Plaintiff, the Arnold Declaration’s calculations of pre- and post-judgment interest will necessarily be affected. The following table summarizes the impact on Plaintiff’s claimed interest after deduction of “Category 2” Fees.

Adjustments to Arnold Declaration's Calculations <i>Applying “Category 2” Adjustments</i>				
Claim	Claimed Amount	Pre-Judg. Int.	Post-Judg. Int.	Ongoing Daily Int.
Adj. Attorneys' Fees	\$6,984,374.24	\$303,474.27	\$403.00	\$13.27
Adj. Non-Taxable Expenses	\$2,763,324.83	\$105,783.48	\$159.44	\$5.25
Total	\$9,747,699.07	\$409,257.75	\$562.44	\$18.52
Deductions from Claim	(\$2,201,566.01)	(\$145,185.43)	(\$127.03)	(\$4.18)

⁷ As shown on Exhibit H-2, [REDACTED]. Such expenses amount to approximately [REDACTED]. The Arnold Declaration's summation of Plaintiff's expenses through the [REDACTED] amount to approximately [REDACTED] (see Arnold Declaration, Exhibit 5). Therefore, this analysis assumes that Category 2 deductible expenses in excess of the expenses billed at the 6/28/19 invoice date, less those deducted as Category 1 expenses, were instead billed in a later period. These excess expenses, less the Category 1 Expenses claimed at the 7/31/19 invoice date, are deducted in the 7/31/19 period. Any remaining expenses are assumed to have been billed at the 8/15/2019 invoice date. Should the Plaintiff or counsel provide alternate indications of when these fees were billed (and, therefore, the invoice date from which interest on the fees is being claimed), I will revise my calculations.

c) *Category 3 Adjustments*

18. As discussed, I understand that “Category 3” fees include expenses that Defendants argue are attorneys’ fees that are insufficiently justified and/or poorly documented in Plaintiff’s Interest Motion. These amount to \$590,167.87 in deductions during the relevant period. Should the Court concur with the Defendants’ position that these fees are improperly claimed by the Plaintiff, the Arnold Declaration’s calculations of pre- and post-judgment interest will necessarily be affected. The following table summarizes the impact on Plaintiff’s claimed interest after deduction of “Category 3” Fees.

Adjustments to Arnold Declaration's Calculations <i>Applying “Category 3” Adjustments</i>				
Claim	Claimed Amount	Pre-Judg. Int.	Post-Judg. Int.	Ongoing Daily Int.
Adj. Attorneys' Fees	\$8,172,483.12	\$391,145.40	\$471.55	\$15.53
Non-Taxable Expenses	\$3,186,614.09	\$132,776.96	\$183.87	\$6.05
Total	\$11,359,097.21	\$523,922.36	\$655.42	\$21.58
Deductions from Claim	(\$590,167.87)	(\$30,520.82)	(\$34.05)	(\$1.12)

d) *Category 1 and 2 Adjustments*

19. Together Category 1 and 2 Fees and Expenses amount to \$2,884,505.04 in total potential deductions during the relevant period. Should the Court concur with the Defendants’ position that these fees are improperly claimed by the Plaintiff, the Arnold Declaration’s calculations of pre- and post-judgment interest will

necessarily be affected. The following table summarizes the impact on Plaintiff's claimed interest after deduction of both "Category 1" and "Category 2" fees.

Adjustments to Arnold Declaration's Calculations <i>Applying "Category 1" and "Category 2" Adjustments</i>				
Claim	Claimed Amount	Pre-Judg. Int.	Post-Judg. Int.	Ongoing Daily Int.
Adj. Attorneys' Fees	\$6,984,374.24	\$303,474.27	\$403.00	\$13.27
Adj. Non-Taxable Expenses	\$2,080,385.80	\$72,929.14	\$120.04	\$3.95
Total	\$9,064,760.04	\$376,403.41	\$523.04	\$17.22
Deductions from Claim	(\$2,884,505.04)	(\$178,039.77)	(\$166.44)	(\$5.48)

e) *Category 1 and 3 Adjustments*

20. Together Category 1 and 3 Fees and Expenses amount to \$1,273,106.90 in total potential deductions during the relevant period. Should the Court concur with the Defendants' position that these fees are improperly claimed by the Plaintiff, the Arnold Declaration's calculations of pre- and post-judgment interest will necessarily be affected. The following table summarizes the impact on Plaintiff's claimed interest after deduction of both "Category 1" and "Category 3" fees.

Adjustments to Arnold Declaration's Calculations <i>Applying "Category 1" and "Category 3" Adjustments</i>				
Claim	Claimed Amount	Pre-Judg. Int.	Post-Judg. Int.	Ongoing Daily Int.
Adj. Attorneys' Fees	\$8,172,483.12	\$391,145.40	\$471.55	\$15.53
Adj. Non-Taxable Expenses	\$2,503,675.06	\$99,922.61	\$144.46	\$4.76
Total	\$10,676,158.18	\$491,068.01	\$616.01	\$20.28
Deductions from Claim	(\$1,273,106.90)	(\$63,375.17)	(\$73.46)	(\$2.42)

f) *Category 2 and 3 Adjustments*

21. Together Category 2 and 3 Fees and Expenses amount to \$2,791,733.88 in total potential deductions during the relevant period. Should the Court concur with the Defendants' position that these fees are improperly claimed by the Plaintiff, the Arnold Declaration's calculations of pre- and post-judgment interest will necessarily be affected. The following table summarizes the impact on Plaintiff's claimed interest after deduction of both "Category 2" and "Category 3" fees.

Adjustments to Arnold Declaration's Calculations <i>Applying "Category 2" and "Category 3" Adjustments</i>				
Claim	Claimed Amount	Pre-Judg. Int.	Post-Judg. Int.	Ongoing Daily Int.
Adj. Attorneys' Fees	\$6,394,206.37	\$272,953.28	\$368.95	\$12.15
Adj. Non-Taxable Expenses	\$2,763,324.83	\$105,783.48	\$159.44	\$5.25
Total	\$9,157,531.20	\$378,736.76	\$528.39	\$17.40
Deductions from Claim	(\$2,791,733.88)	(\$175,706.42)	(\$161.08)	(\$5.30)

g) *Conclusion – Applying All Potential Adjustments*

22. Following is a summary of Plaintiff's adjusted calculations assuming that the Court agrees with Defendants on the exclusion of Category 1, 2, and 3 fees and expenses.

Adjustments to Arnold Declaration's Calculations				
	Applying All Adjustments			
Claim	Claimed Amount	Pre-Judg. Int.	Post-Judg. Int.	Ongoing Daily Int.
Adj. Attorneys' Fees	\$6,394,206.37	\$272,953.28	\$368.95	\$12.15
Adj. Non-Taxable Expenses	\$2,080,385.80	\$72,929.14	\$120.04	\$3.95
Total	\$8,474,592.17	\$345,882.42	\$488.98	\$16.10
Deductions from Claim	(\$3,474,672.91)	(\$208,560.76)	(\$200.49)	(\$6.60)

h) *Alternative Deductions*

23. To the extent the Court should determine that another combination of deductions to Plaintiff's claimed fees not considered in this analysis is appropriate, or that Plaintiff's claims should be further reduced by additional amounts, I may update my calculations of the resulting effect on Plaintiff's pre- and post-judgment interest.

I declare under penalty of perjury under the laws of the United States of America
that the foregoing is true and correct.

Executed on May 14, 2021.



Philip Green